

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ELVIS SUGAR PRESLEY, a/k/a EDWARD CURTIS,

Plaintiff,

vs

5:08-CV-1004

EDUCATION SCHOOL BOARD,

Defendant.

APPEARANCES:

OF COUNSEL:

ELVIS SUGAR PRESLEY
c/o Edward Curtis
83-A-2337
Plaintiff, Pro Se
Auburn Correctional Facility
P.O. Box 618
Auburn, NY 13024

DAVID N. HURD
United States District Judge

ORDER

Plaintiff, Elvis Sugar Presley, also known as Edward Curtis, brought this action pursuant to 28:1331. In a Report Recommendation dated September 26, 2008, the Honorable George H. Lowe, United States Magistrate Judge, recommended that plaintiff's complaint be dismissed as frivolous; that plaintiff file an amended complaint; that judgment be entered dismissing this action if plaintiff fails to timely file an amended complaint; and that if the plaintiff files an amended complaint, that the matter be returned to the court for further review. The plaintiff has filed timely objections to the Report Recommendation.

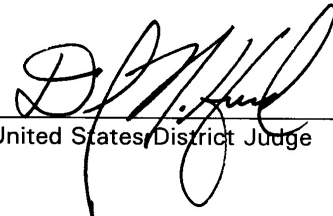
Based upon a de novo review of the portions of the Report-Recommendation to which the plaintiff has objected, the Report-Recommendation is accepted and adopted. See 28 U.S.C. 636(b)(1).

Accordingly, it is

ORDERED that

1. Plaintiff's complaint is DISMISSED as frivolous;
2. The plaintiff, may however, file an amended complaint within thirty (30) days of the filing date of this order. Any amended complaint (which will supersede and replace in its entirety, plaintiff original complaint) must allege claims of misconduct or wrongdoing against the defendant which plaintiff has a legal right to pursue, and over which the court may exercise jurisdiction;
3. In the event plaintiff fails to timely file an amended complaint, the Clerk shall enter judgment dismissing the entire action without further order of this court; and
4. In the event plaintiff files an amended complaint, the file shall be returned to the court for further review.

IT IS SO ORDERED.


United States District Judge

Dated: November 20, 2008
Utica, New York.